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**303 DETROIT STREET**  
**SUITE 300**  
**ANN ARBOR, MICHIGAN 48104-1144**

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(734) 913-9300  
FACSIMILE (734) 913-6007  
jposa@patlaw.com  
dwathen@patlaw.com  
mbaneroft@patlaw.com  
jstaple@patlaw.com

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**DATE:** August 28, 2006

**TO:** EXAMINER GARY ESTREMSKY

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**FROM:** John G. Posa

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**RE:** SN 10/668,758

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Application No. (if known): 10/668,758

Attorney Docket No.: ALC-10002/29

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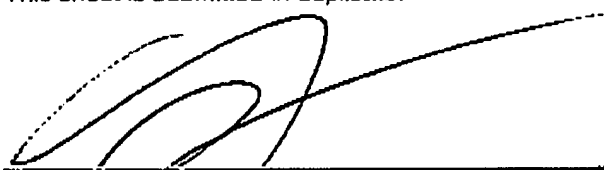
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Appeal Brief Transmittal  
Appeal Brief

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TRANSMITTAL OF APPEAL BRIEF			Docket No. ALC-10002/29
In re Application of: Alan Carter			
Application No. 10/668,758-Conf. #2553	Filing Date September 23, 2003	Examiner G. W. Estremsky	Group Art Unit 3676
Invention: QUICK RELEASE LATCH EXTENDER			
<p style="text-align: center;"><b><u>TO THE COMMISSIONER OF PATENTS:</u></b></p> <p>Transmitted herewith is the Appeal Brief in this application, with respect to the Notice of Appeal filed: <u>June 26, 2006</u> .</p> <p>The fee for filing this Appeal Brief is <u>\$ 250.00</u> .</p> <p><input type="checkbox"/> Large Entity <input checked="" type="checkbox"/> Small Entity</p> <p><input type="checkbox"/> A petition for extension of time is also enclosed.</p> <p>The fee for the extension of time is _____ .</p> <p><input type="checkbox"/> A check in the amount of _____ is enclosed.</p> <p><input checked="" type="checkbox"/> Charge the amount of the fee to Deposit Account No. <u>07-1180</u> . This sheet is submitted in duplicate.</p> <p><input type="checkbox"/> Payment by credit card. Form PTO-2038 is attached.</p> <p><input checked="" type="checkbox"/> The Director is hereby authorized to charge any additional fees that may be required or credit any overpayment to Deposit Account No. <u>07-1180</u> . This sheet is submitted in duplicate.</p> <p style="text-align: right;">Dated: <u>August 28, 2006</u></p> <p> _____ John G. Posa Attorney Reg. No. : 37,424 GIFFORD, KRASS, GROH, SPRINKLE, ANDERSON &amp; CITKOWSKI, P.C. 2701 Troy Center Drive, Suite 330 Post Office Box 7021 Troy, Michigan 48007-7021 (734) 913-9300</p>			

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of: Carter

Serial No.: 10/668,758

Group No.: 3676

Filed: Sept. 23, 2003

Examiner: Estremsky

For: QUICK-RELEASE LATCH EXTENDER

APPELLANT'S BRIEF UNDER 37 CFR §1.192Mail Stop Appeal Brief  
Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

**I. Real Party in Interest**

The real party and interest in this case is Alan Carter, Applicant and Appellant.

**II. Related Appeals and Interferences**

There are no appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**III. Status of Claims**

The present application was filed with 4 claims. Claim 2 has been canceled. Claims 1 and 3-4 are pending, rejected and under appeal. Claim 1 is the sole independent claim.

**IV. Status of Amendments Filed Subsequent  
Final Rejection**

No after-final amendments have been filed.

**V. Summary of Claimed Subject Matter**

Independent claim 1 is directed to a device 100 for use in conjunction with a vehicle of the type

GIFFORD, KRASS, GROH, SPRINKLE, ANDERSON &amp; CIKOWSKI, P.C. 2701 TROY CENTER DR., SUITE 338, P.O. BOX 7821 TROY, MICHIGAN 48007-7821 (248) 647-6000

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with a window having a U-shaped hasp 108 that engages with a hasp-locking mechanism 104 on the vehicle when the window 109 is closed. The device 100 is configured to mount between the hasp 108 and the locking mechanism 104 to keep the window 109 in a partially opened condition. The device 100 comprises a body 101 having first and second ends. The first end of the body including a substitute hasp 102 for engaging with the hasp-locking mechanism 104 on the vehicle. The second end of the body includes an opening 106 for receiving the U-shaped hasp 108 of the window 109. The body 101 includes a quick-release mechanism for engaging the U-shaped hasp of the window, the quick-release mechanism including a spring-biased pushbutton 110 on the body for releasing the U-shaped hasp of the window. (Specification, page 5, line 6 to page 6, line 11).

#### VI. Grounds of Objection/Rejection To Be Reviewed On Appeal

- A. The rejection of claims 1, 3 and 4 under 35 U.S.C. §112, second paragraph.
- B. The rejection of claims 1, 3 and 4 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,165,742 to Frayne.<sup>1</sup>

#### VII. Argument

##### A. Claim 1, 3 and 4 under 35 U.S.C. §112, Second Paragraph.

With respect to the rejection under 35 U.S.C. §112, the Examiner contends that it is not clear how to interpret the scope of the invention, particularly the preamble. Appellant feels the claims, and the scope of the claims, are clearly set forth. It is extremely common in a preamble to introduce elements which are not actually claimed, but with which the invention interacts, these elements being designated primarily for antecedent basis reasons. In instant claim 1, the scope is simply a device configured to mount between the hasp and the locking mechanism [of a vehicle] to keep the window in a partially open condition. All of the elements of the claim have to do with the device, and not the vehicle *per se*. In this case, "in" means "with respect to," and not physically in the vehicle, though the device is mounted "on" the vehicle. In any case, Appellant has amended claim 1 to read "for use in conjunction with a vehicle." Claim 1 clearly does not set forth a "method of using a product."

<sup>1</sup> Although the Examiner states that claims 1, 3 and 4 under 35 U.S.C. §102(b) "are anticipated by U.S. Patent No. 5,165,742 to Frayne," the body of the rejection refers to U.S. Patent No. 4,278,280 to Rashbaum. Based upon the substance of the rejection, Appellant assumes that the reference to Frayne is a typographical error.

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B. Claim 1, 3 and 4 under 35 U.S.C. §102(b)

Claims 1, 3 and 4 stand rejected under 35 U.S.C. §102(b) over Rashbaum ('280). Appellant respectfully disagrees that the structure of Rashbaum "reads on the present claim language." Claim 1 includes the limitation of a body having a first end with a "substitute hasp..." which Rashbaum does not have. Claim 1 includes the limitation of the second end of the body, "including an opening for receiving the U-shaped hasp of the window," a limitation which Rashbaum does not have. Claim 1 further includes the limitation of a quick-release mechanism *including a spring-biased pushbutton* for releasing the U-shaped hasp of the window," a limitation which Rashbaum does not have.

Anticipation may be established only when a single prior art reference discloses, expressly or under principles of inherency, each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Systems, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). Moreover, anticipation requires the presence of all elements of a claimed invention as arranged in the claim, such that a disclosure "that 'almost' meets that standard does not 'anticipate'." Connell v. Sears, Roebuck Co., 722 F.2d 1542, 1548, 220 USPQ 193, 198 (Fed. Cir. 1983). While Rashbaum does arguably teach "a body having first and second ends," the reference fails to teach or suggest the other three elements of claim 1.

In rejecting claim 1, the Examiner stretches the interpretation of Rashbaum to the breaking point. The interpretations of "openings" and "hooks" notwithstanding, the Examiner argues that "[a]s regards claims [sic] the pushbutton 17 the reference, one of ordinary skill in the art would recognize that part 27 can inherently be used for release of 13 from 14 and consequent release of 12 from 51." However, "part 27" is a pin used for "fixed securement" of other components. ('280 Patent, col. 3, lines 27-28). Part 27 is used "to adjust overlap," and the mere fact that the Examiner argues a sequence of operations belies any sort of "quick-release mechanism." One of skill in the art would recognize that, in the context of Appellant's invention, the "quick release" occurs at the push of a spring-biased button, something that the cited reference neither teaches nor suggests.

GIFFORD, KRASS, GROWN, SPERKLE, ANDERSON & CIKOWSKI, P.C. 2701 TROY CENTER DR., SUITE 330, P.O. BOX 7021 TROY, MICHIGAN 48067-7021 (248) 647-6000

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Conclusion

In conclusion, for the arguments of record and the reasons set forth above, all pending claims of the subject application continue to be in condition for allowance and Appellant seeks the Board's concurrence at this time.

Respectfully submitted,

By: 

John G. Posa

Reg. No. 37,424

Gifford, Krass, Groh, Sprinkle,

Anderson &amp; Citkowski, P.C.

PO Box 7021

Troy, MI 48007-7021

(734) 913-9300

Date: August 28, 2006

GIFFORD, KRASS, GROH, SPRINKLE, ANDERSON &amp; CITKOWSKI, P.C. 2781 TROY CENTER DR., SUITE 330, P.O. BOX 7021 TROY, MICHIGAN 48007-7021 (248) 647-6003

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APPENDIX A  
CLAIMS ON APPEAL

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1. For use in conjunction with a vehicle of the type with a window having a U-shaped hasp that engages with a hasp-locking mechanism on the vehicle when the window is closed, a device configured to mount between the hasp and the locking mechanism to keep the window in a partially opened condition, comprising:

a body having first and second ends;

the first end of the body including a substitute hasp for engaging with the hasp-locking mechanism on the vehicle;

the second end of the body including an opening for receiving the U-shaped hasp of the window;  
and

the body including a quick-release mechanism for engaging the U-shaped hasp of the window, the quick-release mechanism including a spring-biased pushbutton on the body for releasing the U-shaped hasp of the window.

3. The device of claim 1, wherein the substitute hasp is also generally U-shaped.

4. The device of claim 1, wherein the substitute hasp is curved or bent to accommodate particular vehicle configurations.

GIFFORD, KRASS, GROH, SPRINKLE, ANDERSON & CITKOWSKI, P.C. 2701 TROY CENTER DR., SUITE 330, P.O. BOX 7021 TROY, MICHIGAN 48067-7021 (248) 647-6000



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**APPENDIX B**

**EVIDENCE**

None.

GIFFORD, KRASS, GROH, SPRINKLE, ANDERSON & CIRKOWSKI, P.C. 2701 TROY CENTER DR., SUITE 330, P.O. BOX 7021 TROY, MICHIGAN 48067-7021 (248) 647-6090

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APPENDIX C  
RELATED PROCEEDINGS

None.

GIFFORD, KRASS, GROM, SPRAXLE, ANDERSON & CIKOWSKI P.C. 2701 TROY CENTER DR., SUITE 330, P.O. BOX 7021 TROY, MICHIGAN 48007-7021 (248) 617-6000